

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA,
WHEELING DIVISION**

PROGRESSIVE MINERALS LLC.,	§	
	§	
Plaintiff,	§	CASE NO. 5:07-CV-108
V.	§	
	§	
MUHAMMAD HAROON RASHID,	§	
GERALD D. HENDRIX, DAVID M.	§	
BERNSTEIN, and JUDE O’NURKERA	§	
	§	
Defendants.	§	

**PROGRESSIVE MINERALS' MOTION IN LIMINE TO PRECLUDE
DEFENDANT JUDE O'NURKERA FROM PRESENTING EVIDENCE**

Pursuant to this Court's Scheduling Order, and Rule 37 of the Federal Rules of Civil Procedure, Progressive Minerals respectfully requests that the Court preclude Defendant Jude O'Nurkera from presenting any evidence at the trial of this action. Progressive Minerals has filed a similar motion, a Motion for Default Under Rule 37 Against David M. Bernstein (Doc. No. 78), in which a similar argument was made in the alternative, and it incorporates that Motion and the factual statement and arguments made therein.

More particularly, with regard to Defendant O'Nurkera, it should be noted that Defendant O'Nurkera has twice been ordered to attend mediation in this case in Wheeling, West Virginia, and he has ignored the Court's orders both times. He did not advise the Court that the date, time, or location of the mediation were inconvenient, and he filed no mediation statement in advance. Further, the Court has twice held scheduling conferences, and Defendant O'Nurkera did not participate in those. Indeed, beyond filing his Answer, Defendant O'Nurkera has done nothing to participate in this case.

For those reasons, and for the reasons stated more fully in the Motion for Default, Progressive Minerals requests that Jude O'Nurkera be precluded from presenting any evidence at trial.

Dated: September 17, 2009

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed electronically, with service on the following on September 17, 2009, via first class mail, postage prepaid.

Jude O'Nurkera
6260 Indian River Dr.
Norcross, GA 30092

David M. Bernstein, Q.C.
EMIQ, Inc.
25 Raspberry Crescent
Beaconsfield, Quebec H9W GC9

/s/ Jacob A. Manning
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